

**ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF: \_\_\_\_\_ )

**Henry Oil Company, Inc.** )

Don's #7 )

Jasper, Walker County, Alabama )

Facility ID No. 414-G036-X001 )

\_\_\_\_\_)

**CONSENT ORDER**

No. \_\_\_\_\_

***PREAMBLE***

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter, "the Department" or "ADEM") and Henry Oil Company, Inc. (hereinafter, "Henry Oil") pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code, §§22-22A-1 to 22-22A-16, (2006 Rplc. Vol.) and the Alabama Air Pollution Control Act, §§22-28-1 to 22-28-23 (2006 Rplc. Vol.) and the regulations promulgated pursuant thereto.

***STIPULATIONS***

1. **Henry Oil** is the permitted owner and/or operator of the underground gasoline storage tanks located at Don's #7 (hereinafter "the Facility") and of a gasoline transport vessel (hereinafter the "Tank Truck") operating in Jasper, Walker County, Alabama. Don's #7 is operating under the authority of ADEM Air Permit 414-G036-X001 issued on August 12, 1997, and the Tank Truck is not operating under the authority of an ADEM Air Permit.

2. The Department is a duly constituted department of the State of Alabama pursuant to

Ala. Code §§22-22A-1 to 22-22A-16 (2006 Rplc. Vol.).

3. Pursuant to Ala. Code §22-22A-4(n) (2006 Rplc. Vol.), the Department is the state air pollution control agency for the purposes of the federal Clean Air Act, 42 U.S.C. 7401 to 7671q, as amended. In addition, the Department is authorized to administer and enforce the provisions of the Alabama Air Pollution Control Act, Ala. Code §§22-28-1 to 22-28-23 (2006 Rplc. Vol.).

4. ADEM Admin. Code r. 335-3-6-.07(5)(a) states:

Each owner or operator of a gasoline dispensing facility subject to this rule shall not permit the transfer of gasoline between a gasoline tank truck and a stationary storage tank unless the gasoline tank truck complies with rule 335-3-6-.20 and the vapor control system is connected and operating in accordance with paragraph (4) of this rule.

5. ADEM Admin. Code r. 335-3-6-.20(3) states:

After October 1, 1991, no person shall allow a gasoline tank truck subject to this rule to be filled or emptied unless the gasoline tank truck has a vapor collection system that meets the test requirements of subparagraph (4) (a) of this rule; and a valid Department Air Sticker attached and visibly displayed; or, a valid Jefferson County Department of Health Air Sticker attached and visibly displayed.

6. On October 9, 2009, Department personnel observed Henry Oil delivering gasoline to an underground gasoline storage tank at the Facility without utilizing the required vapor balance system.

7. On November 6, 2009, the Department issued a Notice of Violation (NOV) to Henry Oil for allowing gasoline to be transferred between a tank truck and a gasoline storage tank without utilizing the vapor balance system, in violation of ADEM Admin Code r. 335-3-6-.07(5).

8. On November 10, 2009, Henry Oil submitted a response to the NOV, explaining that the vapor balance equipment was not utilized because the Tank Truck is not equipped with the proper vapor balance equipment because it is routinely used to work commercial and farm

accounts requiring diesel from their bulk plant. Henry Oil explained further that the Tank Truck was used on October 9, 2009 to pump gasoline from a recently closed site and that the gasoline was a blended product which could not be returned to the bulk plant so it was delivered to the Facility instead.

9. Henry Oil consents to abide by the terms of the following Order and to pay the civil penalty assessed herein.

10. The Department has agreed to the terms of this Consent Order in an effort to resolve the violations cited herein without the unwarranted expenditure of State resources in further prosecuting the above alleged violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

### ***CONTENTIONS***

11. Pursuant to Ala. Code §22-22A-5(18)c. (2006 Rplc. Vol.), in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. In arriving at this civil penalty, the Department has considered the following:

A. **SERIOUSNESS OF THE VIOLATION:** The Department considers this to be a serious violation because Henry Oil, during the transfer of gasoline from the Tank Truck into the

gasoline storage tank, failed to process the gasoline vapors through a vapor control system and allowed gasoline vapors to be emitted into the atmosphere.

B. THE STANDARD OF CARE: By not operating the Facility and Tank Truck in such a manner as to comply with its Permit and ADEM regulations, Henry Oil did not exhibit the required standard of care.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: While there may have been some economic benefit to Henry Oil for its non-compliance, the Department is not able to quantify the benefit for the alleged violations.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The Department is unaware of any efforts made by Henry Oil to minimize or mitigate the effects of the alleged violations on the environment.

E. HISTORY OF PREVIOUS VIOLATIONS: There is no history of prior enforcement actions against Henry Oil by the Department

F. THE ABILITY TO PAY: Henry Oil has not alleged an inability to pay the civil penalty.

G. OTHER FACTORS: It should be noted that this Special Order by Consent is a negotiated settlement and, therefore, the Department has compromised the amount of the penalty it believes is warranted in this matter in the spirit of cooperation and the desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

### ***ORDER***

THEREFORE, Henry Oil, along with the Department, desires to resolve and settle the compliance issues cited above. The Department has carefully considered the facts available to it and has considered the six penalty factors enumerated in Ala. Code §22-22A-5(18)c. (2006 Rplc.

Vol.), as well as the need for timely and effective enforcement, and the Department believes that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and Henry Oil agree to enter into this ORDER with the following terms and conditions:

A. Henry Oil agrees to pay to the Department a civil penalty in the amount of \$2,200.00 in settlement of the violations alleged herein within forty-five days from the effective date of this Consent Order. Failure to pay the civil penalty within forty-five days from the effective date may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. Henry Oil agrees that all penalties due pursuant to this Consent Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel  
Alabama Department of Environmental Management  
P.O. Box 301463  
Montgomery, Alabama 36130-1463  
Attention: Shawn Sibley

C. Henry Oil agrees to submit a plan to the Department, not later than forty-five days from the effective date of this Consent Order, that details how it will ensure that a vapor balance system is utilized during the transfer of gasoline from a tank truck into a gasoline storage tank.

D. Henry Oil agrees to comply with the terms, limitations, and conditions of ADEM Admin. Code r. 335-3-6-.07 immediately upon the effective date of this Consent Order and continuing every day thereafter.

E. The parties agree that this Consent Order shall apply to and be binding upon both parties, their directors, officers, and all persons or entities acting under or for them. Each

signatory to this Consent Order certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the party represented, and to legally bind such party.

F. That, subject to the terms of these presents and subject to provisions otherwise provided by statute, the parties agree that this Consent Order is intended to operate as a full resolution of the violations which are cited in this Consent Order.

G. Henry Oil agrees that it is not relieved from any liability if it fails to comply with any provision of this Consent Order.

H. For purposes of this Consent Order only, Henry Oil agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. Henry Oil also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, Henry Oil shall be limited to the defenses of *Force Majeure*, compliance with this Agreement and physical impossibility. A *Force Majeure* is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of Henry Oil, including its contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of Henry Oil) and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute *Force Majeure*. Any request for a modification of a deadline must be accompanied by the reasons (including documentation) for each extension and the proposed extension time. This information shall be submitted to the Department a minimum of

ten working days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control and without the fault of Henry Oil, the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

I. The Department and Henry Oil agree that the sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future concerning the facility which would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed in Orders as may be issued by the Director, litigation initiated by the Department, or such other enforcement action as may be appropriate, and Henry Oil shall not object to such future orders, litigation or enforcement action based on the issuance of this Consent Order if future orders, litigation or other enforcement action address new matters not raised in this Consent Order.

J. The Department and Henry Oil agree that this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and Henry Oil does hereby waive any hearing on the terms and conditions of same.

K. The Department and Henry Oil agree that this Order shall not affect Henry Oil's obligation to comply with any Federal, State, or local laws or regulations.

L. The Department and Henry Oil agree that final approval and entry into this Order are subject to the requirements that the Department give notice of proposed Orders to the public, and that the public have at least thirty days within which to comment on the Order.

M. The Department and Henry Oil agree that, should any provision of this Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

N. The Department and Henry Oil agree that any modifications of this Order must be agreed to in writing signed by both parties.

O. The Department and Henry Oil agree that, except as otherwise set forth herein, this Order is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State or local law, and shall not be construed to waive or relieve Henry Oil of its obligations to comply in the future with any permit

Executed in duplicate, with each part being an original.

HENRY OIL COMPANY, INC

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

\_\_\_\_\_  
(Signature of Authorized Representative)

\_\_\_\_\_  
John P. Hagood  
Director

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Printed Title)

Date Signed: \_\_\_\_\_

Date Executed: \_\_\_\_\_